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October 8, 2003

VIA ELECTRONIC FILING

Marlene Dortch, Secretary,
Federal Communications Commission
445 12th Street SW
Room TWB-204
Washington, DC 20554

Re: Ex Parte Notification: WC Docket 03-167, Application By SBC Communications Inc. For Authorization Under Section 271 of The Communications Act to Provide In-Region, Inter LATA Service in the States of Illinois, Ohio, Indiana and Wisconsin

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's Rules, Mpower Communications Corp. ("Mpower), by its undersigned counsel, submits this notification of an ex parte meeting in the above-captioned proceeding that took place yesterday involving the undersigned, Scott Sarem and Pat Wilson of Mpower (both via teleconference) and Matthew Brill, Legal Advisor to Commissioner Abernathy. Materials referred to in the course of the presentation are attached hereto.

The parties discussed SBC's failure to comply with Checklist Item 2 of the 271 Checklist in the state of Illinois. Specifically, the parties discussed SBC's improper billing of Mpower for trip charges associated with approximately 14,000 trouble tickets, SBC's refusal to address the disputed charges with Mpower or adhere to the agreement between the parties to settle the disputes, and the on-going problems associated with SBC's inability to properly code trouble tickets and the resulting improper billing. The parties also discussed SBC's September 22 and October 2, 2003 ex parte presentations in this docket responding to Mpower's September 16 and September 24 filings.

Specifically, the parties discussed SBC's contentions in its September 22 and October 2, 2003 ex parte responses: (1) that SBC has a new process in place "in hopes" of

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reducing the number of billing disputes that arise as a result of SBC's faulty trouble ticket coding process; (2) SBC's contention that Mpower does not expend any effort to demonstrate why it believes SBC's charges are inappropriate; and (3) that Mpower has "not agreed to an appropriate sample of trouble tickets from a time period that already was the subject of a prior settlement."

Mpower explained that the new "process" touted by SBC as a solution to the systemic billing problems highlighted by the Mpower dispute consists merely of an electronic method of filing disputes, and that Mpower has not observed any decrease in the number of trip charge disputes it has been forced to file. Further, Mpower provided an explanation of the intensive research and investigation that it undertakes both prior to filing any dispute of improper trip charges with SBC, as well as the hours it expends researching and investigating the disputes in order to prove Mpower's position to SBC once the disputes have been filed. SBC's contention that Mpower has refused to provide a new sample of trouble tickets is simply false. Moreover, SBC has not explained to Mpower why it refuses to adhere to the ground rules that one of its senior executives agreed to as a means of settling the disputes.

Respectfully submitted,



Ross A. Buntrock

cc:
Matthew Brill
Pamela Arluk

Scott Sarem Mpower VP Strategic Relations, Pat Wilson, Mpower Director
Strategic Relations;; Ross Buntrock, Kelley Drye & Warren
October 7, 2003

SBC Midwest 271 Application, WC Docket 03-167



[NOW YOU HAVE THE POWER]

Overview

- Background of Mpower.
- 271 Precedent Requires SBC to Show it Provides Accurate, Auditable Wholesale Bills.
- History of Mpower's Trip Charge Dispute With SBC.
- SBC-IL Violates Checklist Item 2.

Background of Mpower

- Facilities-based CLEC providing voice and data products to small, medium and large businesses.
- Provides Service in California, Illinois and Nevada.
- Collocated in 300 central offices (70 in Illinois).

Section 271 Requires SBC to Provide Accurate Wholesale Bills

- *Verizon Pennsylvania Order*, Memorandum Opinion and Order, 16 FCC Rcd 17419, ¶¶22-23 (2001) concluded:
 - “Inaccurate or untimely wholesale bills can impede a competitive LEC’s ability to compete in many ways. First, a competitive LEC must spend additional monetary and personnel resources reconciling bills and pursuing bill corrections. Second, a competitive LEC must show improper overcharges as current debts on its balance sheet until the charges are resolved, which can jeopardize its ability to attract investment capital. Third, competitive LECs must operate with a diminished capacity to monitor, predict and adjust expenses and prices in response to competition.”
- Grossly inaccurate billing, on on-going basis denies CLECs a meaningful opportunity to compete.

History of Mpower's Dispute with SBC

- SBC has admitted that it incorrectly billed Mpower for trip charges in Illinois between April 2002 through August 2003.
 - Mpower investigates every trouble before opening a ticket with SBC
 - SBC billed Mpower for 14,000 trouble tickets during the dispute period.
 - In an effort to resolve a \$1.2 Million dispute, SBC and Mpower agreed to research a random sample for a two month period and apply the results to the entire dispute period.
- The results of the research was that SBC Ameritech incorrectly billed Mpower 93% of the time.
- Mpower provided SBC with another randomly selected group of trouble tickets from the same sample and came up with identical results.

History of Mpower's Dispute with SBC

- SBC will not honor the agreement it made to resolve the dispute, and has provided no factual basis to suggest that the results of the random sample were incorrect.
 - SBC agrees with the results of the sample (93% of the trouble tickets were billed incorrectly).
 - SBC does not want to take a financial hit against a \$1.2 million receivable
 - SBC merely wants Mpower to accept a different number for a settlement with no reasoning or factual analysis to support its position.
- SBC is flexing its muscles to collect on admittedly incorrect bills

SBC-IL Violates Checklist Item 2

- SBC must be held accountable for its non-compliance with the 271 Checklist.
- SBC's poor billing performance is NOT a discrete issue limited to Mpower.
- SBC has no process in place to resolve these disputes quickly (as evidenced by the 14 month vintage of this one).
- SBC has failed to demonstrate that its "new process" to ensure proper trouble ticket coding.

Conclusion: The Commission Should NOT Approve the Illinois Application

- SBC must not be awarded 271 authority in IL until it can affirmatively demonstrate that it is in compliance
 - This includes resolving Mpower's issue
- The Wireline Competition Bureau has told Mpower that SBC's 271 authority is a "sure thing" despite deficiencies in SBC's billing practices and systems.
- The FCC must enforce the law.
- If SBC is not held accountable for compliance with the law it will be further emboldened to act anti-competitively toward facilities based CLECs.